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Doron Goldbarsht
Louis de Koker *Editors*

Financial Crime, Law and Governance

Navigating Challenges in Different Contexts

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Doron Goldbarsht • Louis de Koker
Editors

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To our wives, Erin and Jeanne, and our children, Arielle, Hallel, Allie and Louis. Without their continuing support and their sacrifices, our work would not be possible.

—Doron and Louis

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Towards a Global Approach to Combating Financial Crime

Louis de Koker and Doron Goldbarsht

Abstract This chapter considers some of the main drivers behind the current globalised approach to combating financial crime. It traces the history behind the current global anti-money laundering and counter terrorism and proliferation financing framework that emerged over the past decades. It considers in particular key United Nations conventions, United Nations Security Council resolutions and the role of the Financial Action Task Force and also regional initiatives, with a particular focus on Europe.

1 Introduction

During the twentieth century, increasing international economic interconnectedness was accompanied by criminal interconnectedness, especially of organised crime. Serious criminal activities transcended borders with greater ease and frequency and hence informed the need for a more global approach to combating serious crime.[1,2]

An effective global approach to combating serious crime requires a sufficient level of harmonised laws and law enforcement measures across nations to prevent criminals from exploiting gaps in jurisdictions with lax regulations. A vulnerable regulatory system in one country could, depending on its infrastructure and context, potentially undermine the security of other jurisdictions.[3] By implementing agreed

[1] McClean (1988); Lewis (1989); Florez and Boyce (1990); Dorn and South (1990); Carter (1994); Solomon (1994); Shelley (1995); Myers (1995).

[2] Williams (1994); Naylor (1995); Van Duyne (1995); Mittelman and Johnston (1999).

[3] Goldbarsht and de Koker (2024); Goldbarsht (2022), p. 46; FATF (2013).

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standards for defining crimes, prosecuting offenders, and recovering illicit gains, nations can close legal loopholes that transnational criminals often exploit. Such consistency also supports mutual legal assistance, enabling efficient cooperation in investigations and prosecutions.

While the benefits of international cooperation against transnational crime are evident, hurdles arise from the complexities of diverse legal systems, political considerations, and variations in capacity and resources. Striking a balance between respecting national sovereignty and fostering collaboration is a delicate endeavour, further hindered by the constant evolution of criminal tactics. Geopolitical tensions and increasing concerns about data privacy and cybersecurity add further layers of complexity.

What are the main drivers of the global crime combating approach that are relevant to the field of financial crime today? This chapter considers this question by revisiting some of the key elements of the history of global crime combating coordination in response to transnational financial crime. It traces the main challenges posed by globalisation to international cooperation and enforcement and considers the web of international conventions, intergovernmental bodies, and regional organisations that represent the modern global approach to combating financial crime.

2 History and Development of the Global Anti-Financial Crime Framework

Global cooperation in respect of transnational criminal enterprise emerged in the twentieth century in response to the proliferation of drugs and the flow of illicitly obtained funds across traditionally defined borders. In the financial crime space, this collaboration expanded to the financing of terrorism and the proliferation of weapons of mass destruction.[4] Today, key elements of the global response to international financial crime are embodied in several United Nations (UN) conventions. These generally standardise key elements of the predicate offences and also address related financial flows. Elements of offences relating to the financing of terrorism and the laundering of proceeds of crime, for example, are addressed in the UN instruments. These are further detailed and supplemented by the standards set by the Financial Action Task Force (FATF). The FATF is an intergovernmental body responsible for setting the international standards in anti-money laundering (AML), counter-terrorism financing (CTF) and counter-proliferation financing (CPF) regulation. The FATF recommendations have received normative status, outside the formal sources of Article 38(1) of the Statute of the International Court of Justice, through compliance and international cooperation.[5]

[4] De Koker (2024).

[5] Abass (2013), pp. 62–63; Goldbarsht and Michaelsen (2017), p. 199.

2.1 UN Conventions

It is well over a century since the International Opium Commission convened in Shanghai from 5–26 February 1909, marking a significant milestone in the development of international narcotics control.[6] The initiative for convening the Commission emerged from US President Theodore Roosevelt's administration, which sought collaboration among nations including the United States, Austria-Hungary, China, France, Germany, the United Kingdom, Italy, Japan, the Netherlands, Persia, Portugal, Russia and Siam. The Commission focused on the pressing issue of the Chinese opium problem, which led to an imperial edict in 1906 prohibiting opium cultivation and use in China over a 10-year period.[7] Beyond regional concerns, the Commission recognised the broader global challenge of narcotics, including addiction to manufactured opiates. Although the Commission was not intended to adopt binding measures, it did adopt resolutions calling for the incremental suppression of opium smoking, combating narcotics smuggling, and encouraging cooperation with governments overseeing foreign concessions in China. The Commission also stressed the need for control over the production and distribution of opiates such as morphine to address the growing issue of addiction.[8]

The Commission accelerated international narcotics control efforts which—only 3 years later—led to the adoption of the Hague Opium Convention of 1912, establishing narcotics control as an institution of international law on a multilateral basis.[9]

As time progressed and the organised drug trafficking threat increased, the focus of narcotics control broadened from drug control measure to include the laundering of proceeds of drug offences. In 1988, the UN adopted the Convention against Illicit Drugs and Psychotropic Substances[10] (the Vienna Convention), the first intergovernmental agreement to provide for the criminalisation of money laundering by state parties. The Vienna Convention embedded a new transnational crime strategy disrupt criminal enterprises. This strategy, adopted to respond to the evolution of drug markets and the growth of organised criminal activity and cartel behaviour, viewed crime syndicates as businesses whose activities can be curtailed by disrupting their application and enjoyment of proceeds of crime. The strategy comprised the uniform criminalisation of the laundering of proceeds of crime and the implementation of a regime allowing the confiscation of proceeds of crime,

[6] Wright (1909). Wright (1912); UN Office on Drugs and Crime (2009), pp. 33–49; Barop (2015).

[7] For the linkages the actions of colonial powers and especially with the Opium Wars, see Collins (2021), UN Office on Drugs and Crime (2009), p. 22.

[8] UN Office on Drugs and Crime (1959).

[9] Convention Relating to the Suppression of the Abuse of Opium and Other Drugs, 23 January 1912, 8 LNTS 187. See UN Office on Drugs and Crime (1959); de Koker and Turkington (2016), p. 243.

[10] UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (opened for signature 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95 (Vienna Convention).

combined with a raft of due diligence and surveillance obligations for regulated institutions.

Article 1(b) of the Vienna Convention requires state parties to criminalise money laundering, in particular:

1. The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with the Convention, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions; and
2. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with article 1(a) of the Convention or from an act of participation in such an offence or offences.

Each country must also, subject to its own laws, criminalise the acquisition, possession or use of property, knowing at the time of receipt that it was derived from a drug offence, regardless of the location of the predicate offence.[11]

The Convention defines 'proceeds' as meaning any kind of asset formed or generated, either directly or indirectly, through the commission of an offence. Notably, the Convention provides that 'knowledge', for purposes of the money laundering offence, could be inferred from objective factual circumstances.[12]

The Convention also addresses the identification, freezing and seizing of criminal proceeds primarily to undermine the profitability and viability of criminal enterprise and to satisfy the financial claims of victims, regardless of the jurisdiction in which they reside. The Convention's confiscation regime enables domestic law enforcement bodies to freeze (pending sentencing) and seize proceeds derived from drug offences (or property of the same value), as well as drugs and instruments of drug offences. In addition, it requires state parties to empower their domestic courts and competent authorities to order the production of bank, financial or commercial records, and state parties are not allowed to refuse cooperation with these obligations on the ground of bank secrecy.[13]

The Vienna Convention also promotes international cooperation by strengthening mutual legal assistance, including extradition.

Though confined to drugs and drug trafficking, the 1988 Convention set the pattern for international cooperation in criminal matters that was soon adopted by other instruments too. In 2000, for example, the UN Convention against Transna-

[11] Vienna Convention, art 1©(i).

[12] Vienna Convention, art 3(3).

[13] Vienna Convention, art 5(3) and 7(3).

tional Organised Crime[14] (the Palermo Convention) was adopted with the intention of promoting cooperation among states in combating 'transnational' activities, including human trafficking, people smuggling, and smuggling and trafficking in firearms and ammunition.

Importantly, the Palermo Convention expanded the UN's definition of 'money laundering' to include several predicate offences, including 'participation in, association with or conspiracy to commit, attempt to commit and aiding and abetting, facilitating and counselling the commission of any of the offences established in accordance with this article'.[15] The Palermo Convention also expanded the ambit of 'proceeds of crime' beyond drug-related offences to proceeds of 'serious' offences. Furthermore, the Convention defined the term 'organized criminal group' as a 'structured group of three or more persons, existing for a period of time and acting in consort with the aim of committing one or more serious crimes or offences . . . in order to obtain, directly or indirectly, a financial or other material benefit'.[16] A group can however be a 'structured group' without having formally defined roles for its members, continuity of its membership or a developed structure. This broad definition of a 'structured group' further extended the scope of the Convention.

In addition, the Convention introduced a responsibility for ratifying states, when acting on a request from another state, to give priority consideration—to the extent permitted by law—to returning assets to enable victim empowerment.[17]

The 2004 UN Convention against Corruption[18] (UNCAC) adopted similar measures relating to the laundering and confiscation of proceeds of corruption, strengthening the global use of the financial system to combat serious transnational crime.[19] UNCAC requires ratifying parties to implement effective anti-corruption policies and to have an independent body or bodies to implement those policies. They are further required to expand the sphere of money laundering activity to include the 'concealment or continued retention of property' known to have been generated from a predicate offence.[20] In addition, UNCAC introduced two mandatory criminal offences—offering or soliciting a bribe and embezzlement or misappropriation by a public official[21]—alongside several optional offences, including trading in (undue)

[14] UN Convention against Transnational Organized Crime (opened for signature 12 December 2000, entered into force 29 September 2003) 2225 UNTS 209 (Palermo Convention).

[15] Palermo Convention, art 6.

[16] Palermo Convention, art 2.

[17] Palermo Convention, arts 13–14.

[18] UN Convention against Corruption, opened for signature 9 December 2003, 2349 UNTS 41 (entered into force 14 December 2005) (UNCAC).

[19] UN Convention against Corruption (adopted 11 December 2003, entered into force 14 December 2005) 2349 UNTS 41.

[20] UNCAC, art 24.

[21] UNCAC, arts 15–17.

influence,[22] abuse of position to obtain an advantage,[23] illicit enrichment and private sector bribery, and embezzlement.[24] Relevantly, UNCAC requires ratifying states to ensure that their money laundering offences apply the 'widest possible range' of predicate offences that result in the generation of proceeds, including those occurring outside of a state's jurisdiction.[25]

While the UN's money laundering and asset confiscation was taking shape, work was also progressing on international consensus regarding the combating of terrorism.

With regard to terrorist financing, it should be noted that, prior to the attacks of 11 September 2001 on the USA, the international community did not assign a high priority to combating terrorist financing.[26] This is despite it being addressed by the 1999 International Convention for the Suppression of the Financing of Terrorism.

For decades sensitivity regarding the definition of terrorism formed a substantial barrier to effective cooperation on counter-terrorism. Agreement on the definition of the concept was difficult to reach in a post-colonial phase where many countries gained independence after violent struggles for freedom from colonialism and oppression.[27] Consensus could, however, be reached on action against specific acts that were deemed as beyond redemption regardless of the political context and motivation. However, as terrorism has gained prominence internationally, a 'working' definition has solidified through state legislation, decisions from various geographical organisations, and international bodies like the UN (Goldbarsht 2020, 19). International conventions were therefore adopted to address specific acts, such as airplane hijacking,[28] hostage taking,[29] causing harm to diplomats,[30] and bombings,[31] among many others.[32] What many of these conventions have in

[22] UNCAC, art 18.

[23] UNCAC, art 19.

[24] UNCAC, arts 20–22.

[25] UNCAC, art 23(2)(a).

[26] Roth et al. (2004), p. 4.

[27] Boaz (2002), Schmid (2023).

[28] Convention for the Suppression of Unlawful Seizure of Aircraft (opened for signature 16 December 1970, entered into force 14 October 1971) 860 UNTS 105.

[29] International Convention against the Taking of Hostages (opened for signature 17 December 1979, entered into force 3 June 1983) 1316 UNTS 205.

[30] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (opened for signature 14 December 1973, entered into force 20 February 1977) 1035 UNTS 168.

[31] International Convention for the Suppression of Terrorist Bombings (opened for signature 15 December 1997, entered into force 23 May 2001) 2149 UNTS 284.

[32] Convention on Offences and Certain Other Acts Committed On Board Aircraft (opened for signature 14 September 1963, entered into force 4 December 1969) 704 UNTS 219; International Civil Aviation Organization, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (opened for signature 23 September 1971, entered into force 26 January 1973) 974 UNTS 177; Convention on the Physical Protection of Nuclear Material (opened for signature 26 October 1979, entered into force 8 February 1987) 1456 UNTS 101; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (opened for signature

common is that they first declare the illegal act to be a criminal one and detail the elements of the offence (establishing the *mens rea* and *actus reus*), then establish legal jurisdiction, the rights of the defendant, an obligation to extradite or prosecute, and international cooperation. From a law enforcement perspective the values of these measures were limited by their focused scope and by their reactive nature: they could only be used once the crime has been committed. It was not until the 1990s that the international community developed a convention to deal with terrorism as a phenomenon that was more than a mere list of specific criminal activities.

On 17 December 1996, the UN General Assembly adopted a resolution[33] that urged all member states to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organisations, whether such financing is direct or indirect, through organisations which also have, or claim to have, charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing, and racketeering, including the exploitation of persons for the purposes of funding terrorist activities.[34]

France proposed the development of a draft UN convention on terrorist financing and this was endorsed at a G8 London Conference on Terrorism on 7 and 8 December 1998.[35] Drafts of the convention were considered at meeting of European Union (EU) member states and at G8 meeting, before being tabled at the UN.[36] The draft was first considered by an ad hoc committee of the UN from 15 to 26 March 1999 and then by a working group that recommended adoption of the convention by the General Assembly.[37] On 9 December 1999, the General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism (the Terrorism Financing Convention).[38] This was the first international treaty to deal directly and explicitly with terrorist financing. Despite its adoption very few signatory countries had taken steps to ratify the Convention prior to the attacks of 11 September 2001 on the USA. Only Botswana and Sri Lanka ratified the Convention in 2000, followed by the United Kingdom and Uzbekistan by mid-2001.[39] Many more signatories and ratifications poured in after the September

10 March 1988, entered into force 1 March 1992) 1678 UNTS 221; and Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (opened for registration 10 September 2010, entered into force 1 July 2018) 3307 UNTS.

[33] Resolutions of the UN General Assembly are not legally binding on member states per se. However, this resolution led to the drafting of the Convention.

[34] *Measures to Eliminate International Terrorism*, GA Res 51/210, UN Doc A/RES/51/210 (17 December 1996), para 3(f).

[35] G8 Justice and Interior Ministers (1998).

[36] Aust (2001), p. 286. The G8 was a political forum comprising the world's eight wealthiest nations. It became the G7 in 2014, after the suspension of Russia.

[37] Aust (2001) p. 287.

[38] International Convention for the Suppression of the Financing of Terrorism, opened for signature 10 January 2000, 2178 UNTS 197 (entered into force 10 April 2002).

[39] UN Treaty Collection (2023).

2001 attacks and on 10 April 2002 the Terrorism Financing Convention entered into force.

The Convention filled an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution and extradition of persons who engage in the financing of terrorism.[40] It introduced the concept of terrorism financing in article 1:[41]

> Any person commits an offence within the meaning of the Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
>
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex to the Convention; or
> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The Terrorism Financing Convention adopted a broad definition of 'funds' to include 'assets of every kind, whether tangible or intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit'.[42] In addition, article 8 authorise the identification, detection and freezing or seizure of any such funds.

2.2 UN Security Council

After bombing attacks on the US embassies in Kenya and Tanzania in 1998, international efforts to fight terrorism intensified. A year later, the UN Security Council (UNSC) adopted, under Chapter VII, SC Resolution 1267, which required UN member states to restrict the activities, and freeze the assets, of individuals and entities identified as being linked to the Taliban. In 2000, UNSC Resolution 1333[43] added a 12-month arms embargo over the territory of Afghanistan under Taliban control and expanded the financial sanctions to cover Osama bin Laden and Al-Qaida.

[40] United States Department of State (2000).

[41] Terrorism Financing Convention, art 2.

[42] Terrorism Financing Convention, art 1.

[43] UNSC Res 1333, UN Doc S/RES/1333 (2000) (19 December 2000).

The sophistication of the attacks perpetrated on the USA on 11 September 2001 signalled a need for greater international cooperation to fight terror and the financing of terrorism. In response, UNSC Resolution 1373 was adopted on 28 September 2001.[44] The resolution contains three sets of general obligations for states, the first two of which are phrased as mandatory ('*The Security Council . . . Decides*') while the third is in hortatory terms ('*The Security Council . . . Calls* upon all States to . . .').[45] Of the mandatory obligations, one deals entirely with financing, requiring states to criminalise the collection of funds that support terrorism in any form; to freeze the resources of persons who commit, or attempt to commit, terrorist acts, as well as those of any entities controlled by such persons or acting under their direction; and to prevent their nationals and any person in their territories from providing any form of financial or related service to terrorists, attempted terrorists, or any entities under their control or direction.

The second obligation requires states to refrain from providing any form of support to terrorists, and to prevent terrorist acts from occurring though a number of steps set out in the paragraph. These steps include suppressing recruitment to terrorist groups, denying safe haven to anybody connected to terrorism, prosecuting terrorists and punishing them in a manner that reflects the seriousness of their crimes, and ensuring that their border controls prevent terrorists from moving between states. There is a strong emphasis on international cooperation, with states being required to exchange information in order to provide early alerts of planned acts of terrorism and to aid each other in criminal investigations.[46]

UNSC Resolution 1373 consists largely of language taken from the Terrorism Financing Convention, which for some time lacked sufficient ratification to come into force.[47]

On 29 July 2005, the UNSC unanimously adopted UNSC Resolution 1617,[48] which strongly urged all member states to implement the comprehensive international terrorism financing standards embodied in the FATF recommendations. This call was reiterated more recently by UNSC Resolution 2462, adopted on 28 March 2019.[49]

[44] UNSC Res 1373, UN Doc S/RES/1373 (2001) (28 September 2001).

[45] UNSC Res 1373, UN Doc S/RES/1373 (2001) (28 September 2001), paras 1–3.

[46] UNSC Res 1373, UN Doc S/RES/1373 (2001) (28 September 2001), para 2.

[47] By 1 December 2000, it had been signed by 35 states, of which only two had ratified it. See the discussion above in 2.1. By 11 September 2001, the number of ratifications had increased to four. By early 2004, 132 states had signed the convention and 112 had ratified it.

[48] UNSC Res 1617, UN Doc S/RES/1617 (20 July 2005).

[49] UNSC Res 2462, UN Doc S/RES/2462 (28 March 2019).

2.3 Financial Action Task Force

UN Conventions create binding obligations for ratifying parties while UNSC resolutions in general are considered as binding on members of the United Nations. They tend to be high level instruments and may not provide sufficient detail to ensure appropriate implementation. The FATF was established as a technical body to provide the required level of technical detail within the scope of its mandate.

The FATF is responsible for setting international standards and supporting policies to mitigate the risks of money laundering, terrorism financing and the financing of proliferation of weapons of mass destruction. Formed in 1989, it now comprises 38 members[50] and two regional bodies, representing major financial economies and hubs. Additionally, the FATF has 9 'associate members', comprising FATF-style regional bodies. They are tasked with promoting and enforcing the FATF's mandate on a regional basis. More than 200 countries and jurisdictions are committed to implementing the FATF's standards in their domestic laws, regulations and practices.

The FATF promotes a coordinated global response to organised crime, corruption, terrorism and proliferation by maintaining global standards (known as the Forty Recommendations) and continuous peer review of compliance with the standards through a mutual evaluation process. This process reviews the technical compliance levels of countries with the FATF standards as well as the level of effectiveness of their domestic measures.

The FATF standards support the implementation of the Vienna Convention, Palermo Convention, UNCAC and the Terrorism Financing Convention. The FATF interprets the 'inevitable constructive ambiguity in politically negotiated documents',[51] and thereby facilitate the incorporation of standards into national legal frameworks. The FATF Recommendations are complemented by a set of Interpretive Notes and a Glossary. The FATF also publishes extensive non-binding guidance and best practice publications which are aimed at assisting member states in updating their AML/CTF/CPF frameworks to adequately address significant risks.

In consultation with regional and representative bodies and observer organisations—including the International Monetary Fund, the World Bank and UN agencies—the FATF standards are revised and updated consistently to reflect new and emerging money laundering, terrorism financing and proliferation financing risks to financial markets. Increasingly, the FATF consults publicly on changes to its standards or guidance.

Failure to implement effectively the FATF standards may result in the FATF issuing a public warning, identifying the risks posed to the international financial system. The FATF may place a state with strategic AML/CTF/CPF deficiencies on either the 'grey list' or the 'black list'.[52] In this way, the FATF pressures

[50] The FATF suspended membership of the Russian Federation on 24 February 2023.

[51] UN General Assembly (2019).

[52] De Koker et al. (2023); Goldbarsht (2017).

non-compliant states to speedily address the deficiencies in order to maintain their position in, and access to, the global economy.[53]

2.4 The Role of Intergovernmental and Regional Bodies

While the FATF standards are 'soft law', in the sense that they are not legally-binding on states, they support elements of the 'hard law' resolutions of the UNSC. They also enjoy wide-spread political support at a global level.[54] The FATF standards have, for example been endorsed by the UN, by several key regional bodies, including the EU, and by international financial institutions like the International Monetary Fund, and the World Bank. In addition, compliance with the standards is enforced by leveraging the power of the international financial system through the FATF's black and greylisting process. The FATF's standards are therefore viewed and experienced as a particularly hard form of soft law and this has ensured a high level of technical compliance with the standards by countries.[55]

The EU and the FATF operate independently but share a common goal of combating money laundering and the financing of terrorism and proliferation, contributing to the global financial anti-crime framework as assessor bodies through mutual evaluation processes and follow-up procedures.[56] The EU and its bodies provide a good example of regional initiatives in relating to global combating of financial crime.

Europe has demonstrated a long-standing commitment to combating money laundering and terrorism financing in combination with the UNSC and the FATF. In 1991, the then European Economic Community issued Council Directive 91/308/EEC, introducing the term 'money laundering' and requiring member states to prohibit money laundering. Organisations within the financial sector were required to implement measures to adequately identify their customers, maintain appropriate records, and, importantly, report suspicious transactions.

In 2001, the European Parliament issued Council Directive 2001/97/EC, which extended the scope of the EU directives to several predicate and laundering offences. In 2005, the EU issued Directive 2005/60/EC, updating procedures for the adequate identification of customers, known as 'customer due diligence' and adopting a risk-based approach to the gathering of client information and identification materials. In 2015, the EU issued Directive (EU) 2015/849, requiring, for example, the reporting of transactions, outside of a regular business relationship, totalling €10,000 or more and incorporating e-money products under AML/CTF regulations. In 2018, the EU issued Directive (EU) 2018/843, aimed at increasing the transparency of the financial

[53] De Koker and Goldbarsht (2024); Goldbarsht and Harris (2022), p. 530.

[54] SC Res 1617, UN Doc S/RES/1617 (20 July 2005), para. 7.

[55] Goldbarsht (2022), p. 215.

[56] FATF (2019).

sector, including through the requirement for publicly available beneficial ownership registries for companies and limiting the anonymity of virtual currencies and digital wallets, and Directive (EU) 2018/1673, which, for example, introduced stricter penalties for money laundering-related offences and 22 predicate offences.

3 Consideration of Globalisation Challenges

The increase in globalisation and the advancement of technology have eroded the relevance of national borders to the financial services ecosystem. The characteristics of transnational crimes are articulated in the Palermo Convention and specifically include money laundering, terrorism, and bribery as crimes that occur in one jurisdiction but may have extraterritorial effects. The ease and immediacy with which value and funds can be transferred across traditional borders—for example, via virtual assets such as cryptocurrencies—have dramatically heightened the nature of money laundering and terrorism financing as transnational crimes. Indeed, the proliferation of decentralised finance has established a free-flowing currency market without any regard for jurisdictional boundaries, requiring only an internet connection. In this regard, the gatekeeper role traditionally played by large financial institutions—maintaining AML/CTF controls, such as customer due diligence measures—can be evaded by peer-to-peer virtual asset transactions or by using cloud-based decentralised service providers, not tied to a single jurisdiction or (potentially) subject to appropriate regulatory controls.[57] Accordingly, AML/CTF regulatory efforts have shifted some of the regulatory role from individual governments towards the private sector. Whether that will succeed and, if so, at what price, is not clear at the moment. These challenges and approaches have however increased the need for a coordinated approach across the global financial system.

4 Collection

Applying a multidisciplinary lens, the chapters in this collection explore the complex interrelationship between financial crime, technology, law, governance, sustainability and international cooperation in jurisdictions around the world. Each double-blinded peer reviewed chapter offers a unique perspective on combating financial crime in a global context. Together, the chapters comprehensively investigate a range of innovative strategies and emerging trends in addressing financial crime.

In their chapter (*Non-Conviction-Based Asset Recovery in Nigeria: An Additional Tool for Law Enforcement Agencies?*)[58] Peter Sproat, Tony Ward, Jackie Harvey,

[57] De Koker et al. (2022).

[58] Sproat et al. (2024).

Sue Turner, Abdullahi Shehu and Abdullahi Bello dissect Nigeria's approach to combating financial crime, focusing on AML and asset recovery powers granted to established agencies. The chapter highlights the country's struggle to successfully prosecute cases of grand corruption and to recover assets, while kleptocrats exploit legal loopholes to hide stolen wealth offshore. The authors explore the concept of non-conviction-based asset recovery as an innovative approach for Nigerian law enforcement agencies, considering its existence within the legal framework and dissecting the barriers to its effective implementation. Through this analysis, the chapter contributes to the ongoing discourse on refining strategies for financial crime prevention and asset recovery in Nigeria.

Louis de Koker and Pompeu Casanovas examine over-compliance and de-risking drawing on experiences in South Africa's banking industry. Their chapter (*'De-risking', De-banking and Denials of Bank Services: An Over-compliance Dilemma?*)[59] identifies the drivers of conservative compliance decisions and reflects on drivers of decisions by banks to terminate customer relationships. Drawing from experiences in a rule-based context, the authors assess the influence of these drivers and their relevance in a risk-based environment. Following a thorough examination, the chapter concludes that the key drivers remain pertinent in a risk-based context and should be considered by regulators seeking to limit de-banking. The authors call for a balanced approach that neutralises over-compliance drivers while maintaining effective compliance measures.

Focusing on New Zealand's property market, Gary Hughes investigates the intersection of money laundering and foreign investment. His chapter (*Money Laundering through Real Estate: Why, and How, New Zealand Has Sought to Regulate It*)[60] sheds light on the challenges involved, particularly in relation to real estate booms. The chapter explores how gatekeeper professions—such as real estate agents, lawyers, and accountants—addressed these challenges through expanded AML regulations. The chapter highlights that, despite regulatory efforts, there remain persistent challenges in the wake of endeavours to regulate the sector by neighbouring Australia.

The nexus of environmental crime, illicit gains, and AML/CTF efforts in Australia is the focus on Ben Scott's chapter (*Environmental Crime and Money Laundering in Australia*).[61] The author examines international and Australian perspectives on environmental crime, including their intersection with AML/CTF practices. The chapter provides an overview of Australia's risk profile and examines recent instances of waste trafficking and water-related crime. By highlighting these issues, the author underscores the need for comprehensive approaches in addressing the financial aspects of environmental crime.

In their chapter (*Giving Shape to Finance and the City of London: Permissive Regulation and Minimalist Governance*),[62] Alex Simpson, Corina Sheerin and

[59] De Koker and Casanovas (2024).
[60] Hughes (2024).
[61] Scott (2024).
[62] Simpson et al. (2024).

Vince Hurley, considers the culture and role of the financial industry of the City of London and its embodiment of capital supremacy and market ideology. Analysing the fallout from the 2008 financial crisis and its implications for systemic harm, the chapter highlights how lenient regulations and corporate greed fostered a culture of risk and aggression. By exploring the ethical implications of this environment, the author focuses on the city's governance and the intricate interplay between finance, regulation, and societal impacts.

Doron Goldbarsht and Hannah Harris explore the governance challenges posed by the FATF Recommendations in addressing money laundering and terrorist financing. Their chapter (*Enhancing Integrity in the Implementation of FATF Recommendations: Robust Governance Frameworks to Combat Financial Crime in an Age of Intergovernmental Rulemaking*)[63] uses Australia as a case study. The authors explore the potential role of an integrity branch of government in upholding strong processes and procedures amid the growing power of intergovernmental organisations such as the FATF. By examining the Australian context, the chapter offers insights into how an integrity branch could enhance legitimacy, maintain good governance, and navigate the evolving landscape of global financial crime.

The United Kingdom combats terrorism financing by implementing global measures from the UN and the FATF. This has pushed financiers to shift away from traditional sources, forcing terrorists to resort to fraud for funding, often going unnoticed. In his chapter (*To Report or Not to Report? An Analysis of the Relationship between Defence against Terrorism Financing Suspicious Activity Reports and Fraud in the United Kingdom*),[64] Nicholas Ryder undertakes a groundbreaking investigation. He identifies a new typology of terrorism financing through fraud. This discovery promises to enhance our comprehension of how terrorists raise and utilise funds, shedding light on the deficiencies within the United Kingdom's counter-fraud and counter-terrorism financing reporting mechanisms.

Ariel Burgess, Rhianna Hamilton and Christian Leuprecht examine the intersection of cryptocurrency-enabled crimes and terrorism. Their chapter (*Terror on the Blockchain: The Emergent Crypto-Crime-Terror Nexus)*[65] challenges the one-size-fits-all approach to addressing these issues. The authors demonstrate how terrorist groups are exploiting cryptocurrency, alongside traditional financial systems, for fundraising and financial transfers. Critiquing the adequacy of existing regulations, the chapter underscores the need for nuanced recommendations that account for the evolving crypto-crime-terror nexus and advocates for effective interagency collaboration to combat these threats.

Focusing on the risks associated with non-fungible tokens (NFTs), Samuel Orchard's chapter (*Money Laundering Risks: The Case of Non-Fungible Tokens: Key Recommendations for Australia)*[66] explores their potential use for money

[63] Goldbarsht and Harris (2024).

[64] Nicolas (2024).

[65] Burgess et al. (2024).

[66] Orchard (2024).

laundering and illicit financial activities. The chapter examines Australia's regulatory landscape in relation to NFTs and provides recommendations for reform to address emerging vulnerabilities. By examining the technical and normative aspects of NFTs, the chapter offers a comprehensive understanding of the challenges posed by this evolving digital asset class.

Slobodan Tomic and Elizabeth David-Barrett's chapter (*The Legal Design of Domestic MLA procedures in Southeast Europe: A Comparative Analysis of Serbia, North Macedonia and Bosnia and Herzegovina*)[67] examines the legal design of Mutual Legal Assistance (MLA) procedures in Southeast Europe, specifically in Serbia, North Macedonia, and Bosnia and Herzegovina. They analyse various forms of MLA, including extradition, takeover of prosecution, and execution of foreign judgments. The study assesses how two key components of legal design, institutional discretion, and checks and balances systems, impact MLA policy. While these countries share similarities in their legal frameworks, differences exist in certain forms of MLA, including discretion and the presence of checks and balances.

In their chapter (*Public–Private Collaboration for Combating Cyber Fraud*),[68] Daniel Halpin and Sheri Todd address the growing threat of cyber fraud in Australia. The chapter emphasises the importance of collaboration between government, law enforcement, and the private sector. The authors highlight the escalating losses due to scams and examine the current state of cooperation between various stakeholders. By discussing benefits and barriers to collaborative efforts, the chapter proposes ways to enhance asset recovery for victims and mitigate the impact of fraudulent activities through strengthened cooperation.

Alfio Puglisi's chapter (*Policy Conservatism and the WireCard Scandal*)[69] focuses on the WireCard scandal, investigating Germany's financial policy approach and its impact on innovation and financial crime. The author analyses the historical context and policy decisions that led to regulatory avoidance, revealing the role of regulatory architecture in concealing financial misconduct. By shedding light on this scandal, the chapter underscores the influence of policy conservatism on financial technology and the importance of balancing regulatory innovation with effective oversight.

In their concluding chapter (*Global Standard-Setting on Financial Crime: Navigating Challenges*),[70] Doron Goldbarsht and Louis de Koker identify some of the questions that global standard-setting for financial crime combating faces. These include addressing the plight of jurisdictions that do not have the resources to meet the increasingly sophisticated standards, and navigating the risks of increased geopolitical and economic fragmentation.

As demonstrated in these chapters, a global approach to combating crime is not only a strategic choice but also a necessity. By fostering collaboration, harmonising

[67] Tomic and David-Barrett (2024).

[68] Halpin and Todd (2024).

[69] Puglisi (2024).

[70] Goldbarsht and De Koker (2024).

regulation, and embracing technology, the global community can build a more robust defence against the evolving landscape of criminal activities and ensure the safety and security of its citizens across borders. The challenges to be navigated to ensure effective and efficient action should however not be underestimated.

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Non-Conviction Based Asset Recovery in Nigeria: An Additional Tool for Law Enforcement Agencies?

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Abstract Within Nigeria, anti-money laundering and asset recovery powers lie primarily with agencies established under the Corrupt Practices and Related Offences Act 2000, the Economic and Financial Crimes Commission Act 2004 and the Advance Fee Fraud and Other Fraud Related Offences Act 2006. International efforts to recover assets associated with serious and organised crime emanating from Nigeria frequently focus on the proceeds of corruption. Despite the powers of Nigerian authorities and extensive international efforts, relatively few cases of grand corruption are prosecuted successfully, and the value of the assets recovered from financially-motivated criminals are very low in comparison to the value of the proceeds they are said to generate. Kleptocrats and other Politically Exposed Persons have been able to exploit legal loopholes in the criminal courts to avoid or delay conviction, enabling them to conceal massive amounts of stolen wealth in offshore financial centres around the world. The aim of this contribution is to focus on non-conviction based asset recovery and its availability to the Nigerian authorities in their efforts to combat financial crime. Despite extensive debate over the existence of non-conviction based asset recovery-related legislation, we demonstrate such provisions are available, however, we also show that there are many barriers to their effective implementation which may obscure their usefulness.

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